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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

NOEL CHANDLER AND ROBERT GRANGER, *Appellants*,

v.

STATE OF FLORIDA, *Appellee*.

On Appeal From The Supreme Court Of Florida

BRIEF OF THE CONFERENCE OF CHIEF JUSTICES *AMICUS CURIAE*

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BRIEF OF THE CONFERENCE OF CHIEF JUSTICES *AMICUS CURIAE*

INTEREST OF AMICUS CURIAE

The Conference of Chief Justices [Conference] is composed of the fifty state Chief Justices. On August 2, 1978, the Conference adopted Resolution I which concerns the electronic new media issue before this Court. The Resolution supports the authority of the Appellee to adopt procedural rules authorizing in-court electronic news media coverage of judicial proceedings.

In many state court systems where Conference members preside as Chief Justices, rules have been adopted to permit differing forms of in-court news media coverage of judicial proceedings. Other state courts have exercised their constitutional discretion and

have declined to adopt such rules. Some courts have not acted on this issue. The courts in the fifty state court systems have exercised their right under our constitutional structure to determine their respective rules of civil and criminal judicial procedure. The Conference, as a representative body, and its members have a substantial interest at stake in this proceeding.

Written consent, in accord with Rule 42, U.S. Sup. Ct. R., to appear as Amicus Curiae has been obtained.

SUMMARY OF ARGUMENT

The right of state courts to regulate state civil judicial procedures is drawn from state constitutions and our federalism. Examination and reexamination, by state courts, of the in-court presence of the electronic news media, *vel non,* is an exercise of authority reserved to the states under our federalism. It is also a recognition that this Court has never created a per se constitutional bar to the in-court presence of electronic news media. These state judicial procedures have emanated from various state experimental programs.

Some state courts have enacted guidelines and restrictions on the in-court presence of electronic news media in lieu of ad hoc determinations. State courts have taken care as a matter of constitutional responsibility not to infringe on any federal constitutional or statutory right.

ARGUMENT

I. Some State Courts Have Adopted Rules Regulating The In-Court Presence Of Electronic News Media.

States historically have maintained court rules

regulating the in-court presence of the news media.[1] Electronic news media, due to state judicial rules, generally has been prohibited from an in-court presence. Some trial courts have permitted, on an ad hoc basis, electronic news media coverage of trials since 1935.[2] In those early days this segment of the news media was both unique and embryonic. Electronic news media has emerged from its early days as a novel part of life in the United States to an apparently permanent role of a significant news transmitter to the public.[3]

The highest courts of at least thirty-five States have concluded that the issue of in-court presence of electronic news media needed to be reexamined. As in all issues of judicial procedure, states have not reacted to this reexamination with uniform conclusions.[4] Such state

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[1] In emphasizing the importance of state government, Hamilton in Federalist No. 17 focused on the state court system:

> There is one transcendant advantage belonging to the province of the State governments, which alone suffices to place the matter in a clear and satisfactory light — I mean the *ordinary administration of criminal-civil justice*. This, of all others, is the most powerful, most universal, and most attractive source of popular obedience and attachment. It is this which, being the immediate and visible guardian of life and property, having its benefits and its terrors in constant activity before the public eye, regulating all those personal interests and familiar concerns to which the sensibility of individuals is more immediately awake, contributes more than any other circumstance to impressing upon the minds of the people affection, esteem and reverence towards the government. The Federalist No. 17 (Hamilton) (e.s.).

[2] *State* v. *Hauptmann*, 115 N.J.L. 412, 180 A. 809 (Ct. Err. & App.) *cert. denied*, 296 U.S. 649 (1935).

[3] *Richmond Newspapers, Inc.* v. *Virginia*, 48 U.S.L.W. 5008, 5012 (July 2, 1980).

[4] Nineteen states permit coverage of trial and appellate courts, three permit coverage of trial courts only and the state court systems of at least twelve other states are studying the issue. Appendix B to Joint Brief of *Amici Curiae* Radio Televison News Direc-

court activity has not been inconsistent with the decisions of this Court and is an acknowledgement of the lack of a per se United States Constitutional ban. It is in furtherance of state efforts to determine whether and how improvements can be made to the respective state judicial systems. Such state activity is an appropriate and legitimate type of experimentation reserved to the states by the United States Constitution.[5]

II. The Adoption Of State Court Rules Permitting In-Court Electronic News Media Coverage Of Judicial Proceedings Is A Fundamental Right Of The Several State Court Systems In Our Federalism.

A. The Conference adopted Resolution I in furtherance of the right of state courts to adopt appropriate rules authorizing in-court electronic news media coverage of judicial proceedings.

In February, 1978 the Conference appointed a committee, composed of sixteen state court Chief Justices, to study the proposed amendment of Canon 3-A(7) of the Code of Judicial Conduct.[6] The proposed amend-

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tors Association, *Chandler* v. *Florida*, No. 79-1260. Local variation of this sort is a strength providing a basis for comparison not a weakness. *Addington* v. *Texas*, 441 U.S. 418, 430-31 (1979).

[5] *See Gerstein* v. *Pugh*, 420 U.S. 103, 123 (1975)("[W]e recognize the desirability of flexibility and experimentation by the States").

[6] American Bar Association, *Code of Professional Responsibility and Code of Judicial Conduct* 59 (1977). The Code of Judicial Conduct was written by the Special Committee on Standards of Judicial Conduct, including Mr. Justice Stewart, and was adopted by the American Bar Association on August 16, 1972. Canon 3-A(7) generally prohibits electronic news media coverage of court proceedings. *See generally* E. Thode, *Reporter's Notes to Code of Judicial Conduct* 56-59 (1973). Canon 3-A(7) is the successor to

ment provided for state courts to adopt rules authorizing appropriate in-court electronic news media coverage of judicial proceedings. Subsequent to the Committee report and extensive debate, the Conference adopted, on August 2, 1978, Resolution I.[7]

Resolution I provides that, under appropriate guidelines and restrictions, in-court electronic news media coverage of judicial proceedings should be subject to the discretion of each state supervising appellate court:

> NOW, THEREFORE, BE IT RESOLVED by the Conference of Chief Justices that the Canon 3-A(7) of the Code of Judical Conduct be amended by adding the following paragraph and the commentary:
>
> > Notwithstanding the provisions of this paragraph, the (name the supervising appellate court or body in the state or federal jurisdiction) may allow television, radio and photographic coverage of judicial proceedings in courts under their supervision consistent with the right of the parties to a fair trial and subject to express conditions, limitations, and guidelines which allow such coverage in manner that will be unobstrusive, will not distract the trial participants, and will not otherwise interfere with the administration of justice.

The Conference concluded that adoption of appropriate in-court electronic news media coverage rules was consistent with protecting the constitutional rights of all parties. A clearinghouse, the National Center for State Courts, was also designated.

Canon 35, which was originally adopted in 1937 and modified in 1952. *See Estes* v. *Texas,* 381 U.S. 532, 596-98 (1965) (Appendix to opinion of Harlan, J., concurring).

[7] See Appendix.

B. State court rules authorizing in-court electronic news media coverage of judicial proceedings are an exercise of fundamental state rights under our federalism.

State courts historically have been empowered to establish the procedures under which state laws are enforced. This state judicial power is a part of the bundle of state rights drawn from state constitutions and the United States Constitution which "in all of the provisions looks to an indestructable Union, composed of indestructable States."[8] The in-court electronic news media rules are but another exercise of inherent state judicial powers that are *not* subject to proscription unless the rules "offend[s] some principle of justice so rooted in the tradition and conscience of our people as to be ranked as *fundamental*."[9]

Thus, as anxious as the federal judiciary may be to vindicate and to protect federal rights and federal interests, it must do so in a way "that will not unduly interfere with the legitimate activities of the States" which occupy "a highly important place in our Nation's

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[8] *Coyle* v. *Smith*, 221 U.S. 559, 579 (1911); *Texas* v. *White*, 7 Wall. 700, 725 (1868). Chief Justice Chase commended on this issue in *Lane County* v. *Oregon*, 7 Wall. 71, 76 (1868):

> The people of the United States constitute one nation, under one government, and this government, within the scope of the powers with which it is invested, is supreme. On the other hand, the people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence. The States disunited might continue to exist. Without the States in union there could be no such political body as the United States.

[9] *Speiser* v. *Randall*, 357 U.S. 513, 523 (1958); *Patterson* v. *New York*, 432 U.S. 197, 201-202 (1977); *Ristaino* v. *Ross*, 424 U.S. 589, 598 n.9 (1976); *San Antonio Indep. School Dist.* v. *Rodriquez*, 411 U.S. 1, 44 (1973); *Sailors* v. *Bd. of Educ.*, 387 U.S. 105, 109 (1967).

history and its future".[10] State courts, as well as other branches of state government, have long been described as appropriate forums for protection of state and federal constitutional rights.[11] As such, state courts are free to and are encouraged, by our federal system, to create alternative judicial means and procedures to meet changing social and economic needs of society.

In *Addington* v. *Texas,* 441 U.S. 418 (1979), this Court recognized that under the federal system states are given broad latitude to experiment in solving problems. That case presented the question of whether the "reasonable doubt" standard of proof used in criminal cases was constitutionally required to be used in mental illness commitment proceedings. This Court held that in commitment proceedings the Constitution required only a standard higher than mere preponderance of the evidence. In its opinion, this Court stated:[12]

> "That some states have chosen — either legislatively or judicially — to adopt the criminal law standard gives no assurance that the more stringent standard of proof is needed or is even adaptable to the needs of all states. *The essence of federalism is that states must be free to develop a variety of solutions to problems and not be forced into a common, uniform mold.* As the substantive

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[10] *Younger* v. *Harris*, 401 U.S. 37, 44 (1971). *See City of Greenwood* v. *Peacock*, 384 U.S. 808, 834 (1966).

[11] Federal courts have given substantial recognition to the inherent ability of state courts to resolve these issues: abstention-*Railroad Comm'n* v. *Pullman Co.*, 312 U.S. 496 (1941) *Carey* v. *Sugar*, 425 U.S. 73, 78 (1976); comity-*Juidice* v. *Vail* 430 U.S. 327, 334 (1977), *Trainor* v. *Hernandez*, 431 U.S. 434 (1977); habeas corpus-*Stone* v. *Powell*, 428 U.S. 465, 491 n.31 (1976), *Wainwright* v. *Sykes*, 433 U.S. 72 (1977); judicial immunity-*O'Shea* v. *Littleton*, 414 U.S. 488 (1974), *Stump* v. *Sparkman*, 435 U.S. 349 (1978).

[12] 441 U.S. at 431 (note omitted and emphasis added).

> standards for civil commitment may vary from state to state, procedures must be allowed to vary so long as they meet the constitutional minimum."

Justice Brandeis has described restraints on the power to experiment, reserved to the states by the Constitution, as "fraught with serious consequences" since in large measure advances have been due to state experimentation.[13] State Government and the needs of the people it serves do not remain static. Efforts to initiate, to study and to act by states provide an opportunity to vindicate reasonable belief by experience. In many instances such state experiments form the basis for subsequent federal rules and programs.[14]

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[13] *New State Ice Co.* v. *Liebman*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting):

> To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country. This Court has the power to prevent an experiment. We may strike down the statute which embodies it on the ground that, in our opinion, the measure is arbitrary, capricious, or unreasonable. We have the power to do this, because of the due process clause has been held by the Court applicable to matters of substantive law as well as to matters of procedure. But in the exercise of this high power, we must be ever on our guard, lest we erect our prejudices into legal principles. If we would guide by the light of reason, we must let our minds be bold.

Justice Brandeis' remarks have been cited by majority rulings as an essential thesis of our federalism and the Fourteenth Amendment. *E.g.*, *Whalen* v. *Roe*, 429 U.S. 589 (1977) (Stevens, J.); *San Antonio Indep. School Dist.* v. *Rodriquez*, 411 U.S. 1, 50 (1973) (Powell, J.). Dissenting Chief Justice Burger, joined by Justices Blackmun and Rehnquist, also relied on these remarks in *Brooks* v. *Tennessee*, 406 U.S. 605, 616 (1971).

[14] Kaden, Politics, Money and State Sovereignty: The Judicial Role, 79 Col. L. Rev. 847, 854 (1979). In addition, federal rules of

Application of the Sixth and Fourteenth Amendments to the states' federalism rights must be done in a manner that preserves the constitutional right of states to define and to experiment with the judicial processes by which the states' interests are implemented.[15] Justice Powell, in *San Antonio Indep. School Dist.* v. *Rodriquez, supra,* described the state's federalism interest as "a foremost consideration in interpreting *any* of the pertinent provisions under which this Court examines state action."[16]

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procedure already have video-taping as part of the discovery process. See Rule 30(b)(4), Fed. R. Civ. P.; *Colonial Times Inc.* v. *Gasch*, 509 F.2d 517 (D.C. Cir. 1975); *In re Matter of Daniels*, 69 F.R.D. 579, 581 (N.D. Ga. 1975).

[15] *Greenholtz* v. *Inmates of the Neb. Penal & Correctional Complex*, 442 U.S. 1, 13 (1979); *Apodaca* v. *Oregon*, 406 U.S. 404, 410 (1972); *Fay* v. *New York*, 332 U.S. 261, 296 (1947). Justice Frankfurter expressed serious concern about limitations imposed by the federal judiciary upon state experimentation:

> The veto power of the Supreme Court over the social-economic legislation of the states, thus exercised through the due process clause, is the most vulnerable aspect of undue centralization. It is at once the most destructive and the least responsible: the most destructive, because judicial nullification on grounds of constitutionality stops experimentation at its source, and bars increase to the fund of social knowledge by scientific tests of trial and error; the least responsible, because it so often turns on the fortuitous circumstances which determine a majority decision and shelters the fallible judgment of individual Justices, in matters of fact and opinion not peculiarly within the special competence of judges, behind the impersonal doors of the Constitution. The inclination of a single Justice or two, the tip of his mind or of his fears, may determine the opportunity of a much needed social experiment to survive, or may frustrate for a long time intelligent attempts to deal with a social evil. F. Frankfurter, The Public and Its Government 49 (1930).

[16] 411 U.S. at 44. Justice Holmes (dissenting) in *Traux* v. *Corrigan*, 257 U.S. 312, 344 (1921) elaborated on this view:

> There is nothing that I more deprecate than the use of the Fourteenth Amendment beyond the absolute compulsion of its words to prevent the making of social experiments that an im-

States have been exercising this federalism right to experiment with the in-court presence of electronic news media at least since 1935. In most instances these experiments occurred on an ad hoc basis as distinguished from formal or specific rules.[17] In *Stroble* v. *California,*[18] 343 U.S. 181 (1952), a constitutional challenge to a controversial 1949 in-court California television camera incident was rejected without comment by this Court. This Court in *Estes* v. *Texas,* 381 U.S. 532 (1965), while reversing the conviction on Sixth and Fourteenth Amendment violations due to the *factual* record, expressly recognized the *need* for further state

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portant part of the community desires, in the insulated chambers afforded by the several states, even though the experiments may seem futile or even noxious to me and to those whose judgment I most respect.

[17] *State* v. *Hauptmann,* 115 N.J.L. 412, 180 A. 809 (Ct. Err. & App.) *cert denied,* 296 U.S. 649 (1935). *See also Stroble* v. *California*, 226 P.2d 330 (Ca. 1951), *aff'd*, 343 U.S. 181 (1952); *Gonzales* v. *State*, 438 P.2d 686 (Colo. 1968); *Cody* v. *State*, 361 P.2d 307 (Okl. Crim. Ct. App. 1961); *Lyles* v. *State*, 330 P.2d 734 (Okl. Crim. Ct. App. 1958); *State* v. *Langley*, 323 P.2d 301 (Or. 1958) *cert. denied*, 358 U.S. 827 (1958); *Irwin* v. *Amhurst*, 74 P.2d 1127 (Or. 1938); *Bradley* v. *Texas*, 470 F.2d 785 (5 Cir. 1972); *Nicholas* v. *Henderson*, 389 F.2d 990 (6 Cir.) *cert. denied*, 393 U.S. 955 (1968); and *Bell* v. *Patterson*, 279 F. Supp. 760 (D. Colo. 1968), *aff'd*, 402 F.2d 394 (10 Cir. 1968) *cert. denied*, 403 U.S. 955 (1971).

[18] *Stroble* involved a very controversial first degree sex-murder of a young child. The crime, arrest and trial also generated significant sensational newspaper, radio and television publicity. Many news related events occurred, such as the District Attorney releasing "play-by-play" press releases and the Governor convening the California legislature in special session to study problems of sex "crimes." Legislative committee hearings were also held throughout California to gather testimony on "Stroble type crimes." *Stroble* has been cited with approval in *Estes* v. *Texas*, 381 U.S. 532, 541 (1965) and *Nebraska Press Assoc.* v. *Stuart*, 427 U.S. 539, 554 (1976). Chief Justice Burger, in *Nebraska Press*, described the *Stroble* decision as holding "that petitioner had failed to demonstrate a denial of due process." 427 U.S. at 554.

experimentation.[19] Justice Clark, in the plurality opinion, recognized that advances "may bring about a change in the effect of telecasting upon the fairness of criminal trials." Justice Harlan, concurring, described the situation as a "novel course of procedural experimentation" which was "one of the valued attributes of our federalism:"[20]

> Forbidding this innovation, however, would doubtless impinge upon one of the valued attributes of our federalism by preventing the States from pursuing a novel course of procedural experimentation.

Justice Stewart, dissenting, also recognized this federalism attribute:[21]

> I do not think that the Constitution denies to the State or to individual trial judges all discretion to conduct criminal trials with television cameras present, no matter how unobtrusive the cameras may be.

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[19] Justice Clark was joined in the plurality opinion by the Chief Justice, and Justices Douglas and Goldberg. Justice Harlan "concurs in this opinion subject to the reservations and to the extent indicated in his concurring opinion." The Chief Justice, with Justices Douglas and Goldberg, joined in the Court's opinion, but also filed a separate opinion expressing the view that cameras in state court rooms violated the Fourteenth Amendment. Justices Stewart, Black, Brennan and White dissented. Justice Brennan also filed a separate opinion characterized as a clarifying opinion.

[20] 381 U.S. at 587. In *Nebraska Press Association* v. *Stuart*, 427 U.S. 539, 552 (1976), Chief Justice Burger described *Estes* as a trial totally lacking in due process and presenting issues larger than in-court electronic news coverage. The Court in *Sheppard* v. *Maxwell*, 384 U.S. 333 (1966), in an eight to one decision, described *Estes* as a situation in which the "totality of circumstances" produced a denial of Sixth and Fourteenth Amendment rights. The Court in *Murphy* v. *Florida*, 421 U.S. 794 (1975), in a seven-one-one decision, similarly described *Estes* as "a state court conviction obtained in a trial atmosphere that had been utterly corrupted by press coverage."

[21] 381 U.S. at 615.

Estes has *not* been interpreted to constitutionally preclude this federalism experimentation.[22] Such a multiple state experimentation program by the highest state courts in thirty-five states has been effectuated or considered subsequent to a thorough and deliberate study of the competing values and rights.[23]

C. The adoption of state court rules permitting in-court electronic news media coverage of judicial proceedings is an implementation of state authority to provide rights beyond those granted by the United States Constitution.

One of the highest state judicial responsibilities is to apply the United States Constitution so as to preserve

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[22] Justice Brennan, in his clarifying opinion, stated the result reached in *Estes*:

> I merely write to emphasize that only four of the five Justices voting to reverse rest on the proposition that televised criminal trials are constitutionally infirm, whatever the circumstances.
>
> * * *
>
> Thus today's decision is not a blanket constitutional prohibition against the televising of state criminal trials. 381 U.S. at 617. (e.s.)

[23] *E.g., In re Hearings Concerning Canon 35*, 296 P.2d 465 (Colo. 1956) and *In re Petition of Post-Newsweek*, 370 So.2d 764 (1979). This Court in another context has labeled attempts by persons who, in the course of argument, resort to a parade of speculative horribles to fight phantom issues:

> The process of Constitutional adjudication does not thrive on conjuring up horrible possibilities that never happen in the real world and devising doctrines sufficiently comprehensive in detail to cover the remotest contingency. Nor need we go beyond what is required for a reasoned disposition of the kind of controversy now before the Court. *New York* v. *United States* 326 U.S. 572, 583 (1946).

the federal constitutional rights of *all* parties.[24] Each state is also, as part of our federalism, empowered to adopt a higher state standard by statute, rule or constitution.[25] Rules adopted by state courts that permit in-court electronic news media are efforts toward such higher standards.

In *Stroble* and *Estes* the trial court did not have the benefit of court rules adopted by the state judiciary. Some state courts have filled this void to ensure full protection of all state and federal constitutional rights, to recognize the role the electronic news media has to inform the public and to fulfill the purposes of a public trial. In *Richmond Newspapers, Inc.* v. *Virginia,* there are statements in the Court's several opinions that the public now relies on the news media to gather facts and communicate news to the public.[26] The thrust of the opinions is that the media is the public's surrogate under the First and Fourteenth Amendments to gather and disseminate news. This makes it all the more necessary

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[24] Justice Rehnquist (dissenting) recognized this concept most recently in *Richmond Newspapers, Inc.* v. *Virginia*, 48 U.S.L.W. 5008, 5021 (July 2, 1980):

> We have at present 50 state judicial systems and one federal judicial system in the United States, and our authority to reverse a decision by the highest court of the State is limited to only those occasions when the state decision violates some provision of the United States Constitution. And that authority should be exercised with a full sense that the judges whose decisions we review are making the same effort as we to uphold the Constitution.

[25] Brennan, State Constitutions and the Protection of Individual Rights, 90 Harv. L. Rev. 489 (1977); *Meachum* v. *Fano*, 427 U.S. 215, 229 (1976); *Oregon* v. *Hass*, 420 U.S. 714, 719 (1975); *California* v. *Disbrow*, 545 P.2d 272 (Ca. 1976); *Commonwealth* v. *Triplett*, 341 A.2d 62 (Pa. 1975).

[26] 48 U.S.L.W. at, 5012, 5013, 5014 n. 12; Justices Brennan and Marshal concurring at 5016 n. 2. In this connection no distinction was drawn between the right of the print and electronic news media to be present in court. 48 U.S.L.W. at 5012, 5013 n. 9, 5014 n. 12.

to accommodate the in-court presence of the electonic news media. Thus, efforts by state courts to accommodate the in-court presence of electronic news media should be affirmed by this Court within due process and fair trial guarantees.

CONCLUSION

State courts historically have regulated the in-court presence of electronic news media. The authority to do so is derived from common law, state constitutions and our federalism. Continued state court exercise of this constitutional right need not conflict with a party's state or federal constitutional rights. Such guidelines and restrictions as have been or are adopted by state courts to authorize the in-court presence of electronic news media are subject always to federal due process and fair trial guarantees.

Respectfully Submitted,

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Date: August _____, 1980

APPENDIX

APPENDIX I

CONFERENCE OF CHIEF JUSTICES

RESOLUTION I

Television, Radio, Photographic Coverage Of Judicial Proceedings

WHEREAS, the Conference of Chief Justices appointed a sixteen member committee in February, 1978, to study the possible amendment of Canon 3-A(7) of the Code of Judicial conduct to permit electronic and photographic coverage of the courts of our nation under guidelines that would preserve the decorum and fairness of our judicial proceedings; and

WHEREAS, the Conference has discussed, debated and considered the judicial canon which bans broadcasting, televising, audio recording or taking photographs during trial and appellate proceedings for news purposes; and

WHEREAS, the highest court in each state has the authority and responsibility to provide ethical standards, to upgrade the quality of justice administered and to improve the contact with the public in each state; and

WHEREAS, the news media, both print and electronic, serve an important role in informing the public and it is in the best interest of the public to be fully and accurately informed of the operation of judicial systems;

NOW, THEREFORE, BE IT RESOLVED by the Conference of Chief Justices that the Canon 3-A(7) of the Code of Judicial Conduct be amended by adding the following paragraph and the commentary:

> Notwithstanding the provisions of this paragraph, the (name the supervising appellate court or body in the state or federal jurisdiction) may allow television, radio and photographic coverage of judicial proceedings in courts under their supervision consistent with the right of the

parties to a fair trial and subject to express condition, limitations, and guidelines which allow such coverage in a manner that will be unobtrusive, will not distract the trial participants, and will not otherwise interfere with the administration of justice.

Commentary:

If television, radio and photographic coverage is permitted it should be supervised by the appropriate appellate body which supervises the courts within its jurisdiction. It is necessary that there be express conditions and guidelines adopted by the supervising court or body in order to provide a specific manner and means for this type of media coverage. These guidelines should include the type and location of equipment, the discretion left to the individual trial or appellate court, and the necessity, if any, to obtain the consent of the participants. Absent special circumstances for good cause shown, no consent appears necessary in appellate courts. Special circumstances may exist in all courts for the restriction of this type of coverage in cases such as rape, custody of children, trade secrets, or where such coverage would cause a substantial increase in the threat of harm to any participant in a case.

BE IT FURTHER RESOLVED, that the Conference designate the National Center for State Courts as the Clearinghouse for all photographic and electronic-in-the-courtroom information for various states and federal jurisdictions. In order to provide the complete exchange of information, the Conference recommends that each jurisdiction forward to the National Center all rules, statistics, guidelines, opinions, reports and other information pertaining to the use of photographic and electronic devices in the courtrooms of their states, and that all information be made readily available to the courts upon request.

Adopted at the Thirtieth Annual Meeting held in Burlington, Vermont, August 2, 1978.